

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CAROL ANN-ALEXANDER LEVITTE,

Defendant-Appellant.

UNPUBLISHED

July 19, 2005

No. 256630

Oakland Circuit Court

LC No. 03-190290-FH

Before: Fitzgerald, P.J., and Meter and Owens, JJ.

PER CURIAM.

A jury convicted defendant of negligent homicide, MCL 750.324, and she was sentenced to forty-five days in jail and two years' probation. Defendant appeals as of right. We affirm.

This case arises from an automobile accident on January 21, 2003, at 2:50 p.m. at the intersection of Inkster Road and Twelve Mile Road in Southfield. Defendant was traveling eastbound on Twelve Mile. The victim was beginning a left turn onto southbound Inkster from westbound Twelve Mile when her car collided with defendant's car. The victim was fatally injured.

Defendant first argues that the evidence was insufficient evidence to support her conviction. This Court reviews a defendant's allegations of insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). However, this Court should not interfere with the jury's role of determining the weight of the evidence or the credibility of the witness. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Circumstantial evidence and reasonable inferences that arise therefrom can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Further, it is for the trier of fact, not this Court, to determine what inferences can be fairly drawn from the evidence and the weight accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To prove negligent homicide, the prosecution must show that (1) the defendant was operating a motor vehicle, (2) the defendant was operating the vehicle at an unreasonable speed or in a negligent manner, (3) the defendant's negligence was a substantial cause of an accident resulting in injuries to the victim, and (4) those injuries caused the victim's death. See MCL 750.324;¹ *People v Tims*, 449 Mich 83, 95, 99, 103-104; 534 NW2d 675 (1995).

Defendant contends that the prosecutor failed to establish that defendant operated her vehicle in a negligent manner and that she was a substantial cause of the accident. The prosecution presented eyewitness testimony that the victim had the green arrow for the left turn at the time of the accident and that the light was red for the Twelve Mile traffic. Plaintiff's reconstruction expert opined that at the time of the accident the victim had the green arrow and that defendant had a red light. Defendant's reconstruction expert opined that the victim was at fault for the accident. Viewing the evidence in the light most favorable to the prosecution, resolving all conflicts in its favor, and leaving to the jury the questions of witness credibility, what inferences could be fairly drawn, and the weight they should be afforded, we believe the evidence was sufficient to permit a rational trier of fact to find that defendant operated her vehicle in a negligent manner and that she was a substantial cause of the accident.

Defendant next argues that the prosecutor improperly questioned her about her use of prescription drugs because no evidence was presented that drugs influenced defendant's conduct. We disagree.

This Court ordinarily reviews claims of prosecutorial misconduct de novo on a case-by-case basis and examines the prosecutor's arguments in context to determine whether the defendant was denied a fair trial. *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004). However, because defendant did not object to the prosecutor's questions, this issue is not preserved. This Court reviews unpreserved issues for plain error affecting substantial rights. *Id.*

Defendant's argument is premised on the assertion that the prosecutor characterized defendant "as a person who was mentally imbalanced and on drugs." The record does not support this assertion. Officer Taylor testified about his interview with defendant, including the medical history. Taylor testified that defendant took medication, including Ambien and Ativan for anxiety. On cross-examination, the prosecutor questioned defendant about her activities on the day of the accident. Defendant testified that she had doctor appointments and that she was traveling from one appointment to another when the accident occurred. The prosecutor also

¹ MCL 750.324 provides:

Any person who, by the operation of any vehicle upon any highway . . . at an immoderate rate of speed or in a careless, reckless or negligent manner . . . shall cause the death of another, shall be guilty of a misdemeanor, punishable by imprisonment . . . not more than 2 years or by a fine of not more than \$2,000.00, or by both

questioned defendant about her interview with Officer Taylor. Defendant testified that she remembered discussing her medications with Taylor. She indicated that she was taking Ambien and Ativan because she had a sleep disorder, and the medication allowed her to get six hours of sleep. At no point did the prosecutor characterize defendant as mentally imbalanced and on drugs. Defendant has not demonstrated any plain error in the prosecutor's remarks.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Donald S. Owens